

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Application

of

C.I.P.P. REALTY CO. INC.

For revision or refund of franchise  
tax under Article 9-A of the Tax Law  
for the fiscal year ended March 31,  
1964.

C.I.P.P. Realty Co. Inc., the taxpayer herein, having filed application for revision or refund of franchise tax under Article 9-A of the Tax Law for the fiscal year ended March 31, 1964, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on October 17, 1968 before William F. Sullivan, Hearing Officer of the Department of Taxation and Finance, at which hearing, Leon Wollenberg, secretary of the taxpayer, appeared personally and testified, together with Melvin J. Katz, Esq., of Counsel, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) That the taxpayer was incorporated July 13, 1959 under the provisions of the Stock Corporations Law of New York State, and has authorized capital stock of 200 shares of no par value, all of which are issued to The Trustees of the Cafeteria Industry Pension Plan;

(2) That the taxpayer filed its franchise tax report for the fiscal year ended March 31, 1964, and computed and paid the following tax:

Entire Net Income  
Tax at 5½%

\$13,159.55  
\$ 723.78

(3) That in arriving at entire net income 90% (11,772.00) of interest on an indebtedness directly owed to its sole stockholder, The Trustees of the Cafeteria Industry Pension Plan, was not deducted from entire net income;

(4) That the indebtedness on which the interest was owed was a mortgage made by the taxpayer as mortgagor to the Cafeteria Industry Pension Plan;

(5) That the taxpayer was primarily engaged in the operation of real estate;

(6) That Article 1, Section 3.9 of the General Corporations Law of the State of New York provides:

"A 'business corporation' is a corporation formed under or subject to the stock corporations law \* \* \*";

(7) That Article 9-A of the Tax Law is headed "Franchise Tax on Business Corporations";

(8) That Section 209.1 of Article 9-A of the Tax Law provides, in part:

"For the privilege of exercising its franchise or doing business in this state in a corporate or organized capacity \* \* \*, every domestic or foreign corporation, \* \* \* shall annually pay a franchise tax, upon the basis of its entire net income, or upon such other basis as may be applicable as hereinafter provided, \* \* \*";

(9) That Section 208.9(b)(5) of the Tax Law reads as follows:

(b) "Entire net income shall be determined without the exclusion, deduction or credit of:

(5) "ninety per centum of interest on indebtedness directly or indirectly owed to any stockholder or shareholder (including subsidiaries of a corporate stockholder or shareholder), or members of the immediate family of an individual stockholder or shareholder, owning in the aggregate in excess of five per centum of the issued capital stock of the taxpayer, except that such interest may, in any event, be deducted

(i) "up to an amount not exceeding one thousand dollars,"

Upon the foregoing findings, the State Tax Commission hereby,

**DETERMINES:**

(A) That the taxpayer is a "business corporation" and is subject to tax under Article 9-A of the Tax Law;

(B) That 90% of the interest on indebtedness owed to its sole stockholder was properly included in entire net income;

(C) That the tax, as set forth in item (2) above, is affirmed as computed;

(D) That the aforesaid tax does not include taxes or other charges which are not legally due.

Dated: Albany, New York

this 9th day of September 1969

**THE STATE TAX COMMISSION**

Norman Gallman'

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**President**

A. Bruce Manley

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**Commissioner**

Milton Koerner

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**Commissioner**

/s/